

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF SAMPSON)	
)	
IN THE MATTER OF:)	SPECIAL ORDER BY CONSENT
ENVIVA PELLETS SAMPSON, LLC)	
SAMPSON COUNTY FACILITY)	SOC 2018-__
)	
[FACILITY ID 8200152])	

This SPECIAL ORDER BY CONSENT (hereinafter referred to as the "ORDER") is made and entered into pursuant to North Carolina General Statute 143-215.110 by and between ENVIVA PELLETS SAMPSON, LLC. (hereinafter referred to as the "COMPANY" or "ENVIVA") and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (hereinafter referred to as the "COMMISSION").

WITNESSETH:

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- I. The COMMISSION and COMPANY do hereby stipulate and agree to the following:
- A. The COMPANY operates a wood pellets manufacturing facility in Faison, Sampson County, North Carolina ("Facility"). The Facility currently operates under Air Quality Permit No. 10386R03 (the "Permit") which was issued by the North Carolina Division of Air Quality ("DAQ") on April 7, 2017.
 - B. Specific Permit Condition 2.2.A.2 of the Permit, pursuant to 15A NCAC 2D .0530 of the North Carolina Administrative Code ("Prevention of Significant Deterioration", "PSD"), establishes a best available control technology ("BACT") limit of 1.07 pounds per oven-dried ton of wood pellets (lb/ODT) for volatile organic compound ("VOC") emissions from the wood-fired direct heat drying system (ID No. ES-DRYER) based on a three-hour averaging period.
 - C. On April 18-19, 2017 emissions testing for VOC was performed to demonstrate compliance with the BACT limit for VOC of 1.07 lb/ODT that applies to ES-DRYER. In a Notice of Violation / Notice of Recommendation for Enforcement ("NOV/NRE") issued by the Division of Air Quality ("DAQ") dated November 3, 2017, the results of the April 18-19, 2017 VOC testing were determined to be inconclusive. Therefore, the November 3, 2017 NOV/NRE required the COMPANY to perform additional testing for VOC emissions from ES-DRYER.

- D. On March 19, 2018 the COMPANY submitted a Prevention of Significant Deterioration ("PSD") permit application to DAQ to, among other changes, allow for the installation of additional pollution controls, including a regenerative thermal oxidizer ("RTO"), on ES-DRYER and three green wood hammermills (ID No. ES-GHM-1 through ES-GHM-3). This PSD permit application represents that the RTO will achieve 95% VOC emission control efficiency and estimates the VOC emission rate at the RTO outlet to be 0.15 lb/ODT. The air quality permit that will be issued by DAQ as a result of this application is hereinafter referred to as the "PSD permit."
- E. On March 29, 2018 the COMPANY performed additional testing for VOC emissions from ES-DRYER. An emission test report, dated May 3, 2018, was submitted to DAQ that demonstrated VOC emissions of 1.21 lb/ODT from ES-DRYER. These test data indicate a violation of the VOC BACT limit of 1.07 lb/ODT set forth in Specific Permit Condition 2.2.A.2 of the Permit.
- F. On June 5, 2018 the Fayetteville Regional Office of DAQ issued an NOV/NRE to the COMPANY in response to the data presented in the May 3, 2018 emission test report.
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- G. On June 14, 2018 the COMPANY responded to the June 5, 2018 NOV/NRE.
- H. To reduce its emissions, minimize harm to the environment, and achieve compliance with the VOC BACT limit for ES-DRYER as soon as possible, the COMPANY intends to commence construction of a RTO prior to the date of issuance of a PSD permit that incorporates the installation of the RTO on ES-DRYER ("PSD Permit Issuance Date"). The COMPANY acknowledges that this action would constitute a violation of 15A NCAC 2D .0530.
- I. The COMPANY has requested the development of this ORDER to allow the COMPANY and DAQ to resolve the compliance issues described herein. The COMPANY acknowledges that DAQ cannot prejudge its consideration of the COMPANY's PSD permit application and that the COMPANY assumes any risk associated with the PSD permit application being denied or with the PSD permit being issued with conditions that are undesirable to the COMPANY.

THEREFORE, the COMMISSION and COMPANY, desiring to resolve and settle the compliance issues between them, have agreed to enter into this ORDER with the following terms and conditions:

II. The COMPANY, desiring to operate in a safe and environmentally sound manner during the period of this ORDER and thereafter in accordance with the rules and regulations of the COMMISSION, does hereby agree to perform the following activities:

- A. Upon execution of this ORDER, the COMPANY shall comply with the interim operations requirements in Paragraph III below.
- B. The COMPANY will notify DAQ within seven days of commencing construction on the RTO for ES-DRYER ("RTO Construction Start Date"). Commencement of construction of the RTO prior to PSD Permit Issuance Date constitutes a violation of 15A NCAC 2D .0530, which is resolved by the terms of this ORDER.
- C. The COMPANY will complete construction of the RTO on ES-DRYER within 120 days of RTO Construction Start Date.
- D. The COMPANY will begin continuous operations of the RTO on ES-DRYER within 180 days of RTO Construction Start Date.
- E. The COMPANY will submit an emissions testing protocol at least 45 days prior to the VOC emissions compliance test on the RTO for ES-DRYER.
- F. The COMPANY will perform emissions testing to demonstrate a VOC emission rate of 0.15 lb/ODT at the RTO outlet, per the DAQ-approved protocol, within 90 days of completion of RTO construction. The COMPANY will submit an emissions test report on such performance testing within 30 days of the RTO performance test date.
- G. No later than 14 days after the deadline for completing each milestone required in Paragraphs II.C. and II.D., the COMPANY shall submit to DAQ written certification indicating whether or not each milestone was achieved.

III. Interim Operations. This ORDER authorizes operation of the Facility for the period of time necessary to obtain DAQ approval of the March 19, 2018 PSD permit application and the installation of the RTO on ES-DRYER according to the schedule set forth in this ORDER. For the duration of this ORDER, the Facility shall not process more than 50% softwood on a monthly basis. The COMPANY shall submit monthly reports to DAQ summarizing the average percentage of softwood processed each month. These production reports shall be submitted within 14 days following the end of the calendar month. In the event the Facility exceeds the softwood usage percentage limitation for any calendar month during the term of the ORDER, the COMPANY agrees to pay stipulated penalties per Paragraph V.B.

- IV. The COMMISSION agrees that, except for a violation of the terms and requirements of this ORDER, the Facility shall not be subject to a separate Notice of Violation or other enforcement action related to compliance with 15A NCAC 02D .0530 for VOC emissions from ES-DRYER during the term of this ORDER.
- V. The COMPANY shall pay the following civil penalties:
- A. The COMPANY agrees to pay the COMMISSION a civil penalty in the amount of \$27,500. This amount shall be due and payable within thirty (30) days of the effective date of this ORDER.
- B. Unless excused under Paragraph VI, the COMPANY agrees to pay the COMMISSION stipulated penalties according to the table below:

<u>Deadlines and Requirements</u>	<u>Stipulated Penalties</u>
Failure to comply with any deadline in Paragraph II or Paragraph III	\$500 per day for the first 5 days and \$1,000 per day thereafter
Exceedance of VOC emission rate of 1.07 lb/ODT at ES-DRYER outlet prior to RTO performance demonstration	\$4,500 per month ¹
Exceedance of VOC emission rate of 0.15 lb/ODT at the RTO outlet after RTO performance demonstration	\$4,500 per month ¹
Exceedance of the softwood usage percentage limitation (50%) for any calendar month during the term of the ORDER	\$2,000 first exceedance \$6,000 second exceedance \$18,000 for each exceedance after the second

¹ The sum of all months for each calendar year semiannual period shall be due and payable on a semiannual basis with payments due within thirty (30) days of the end of the sixth and twelfth months starting with the month of the effective date of this ORDER.

Stipulated Penalties:

Failure within thirty (30) days of receipt of Director's written demand to pay the penalties will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. By entering this ORDER, the COMPANY waives any and all defenses and agrees that the sole issues in such action are whether thirty (30) days has elapsed and/or whether such penalty is excused pursuant to Paragraph VI of this ORDER. The COMPANY shall pay all costs, including agency and attorney fees, associated with collection of a delinquent stipulated penalty.

- VI. The COMPANY'S obligation to comply with the requirements set forth in this ORDER for which a stipulated penalty may be assessed, may be delayed or excused only to the extent that noncompliance is caused by circumstances beyond control of the COMPANY, as determined by the DAQ Director (hereinafter referred to as the "Director"). Contractor delays or failure to obtain funding will not be considered events beyond the COMPANY's control. If any such delaying event occurs, the COMPANY shall notify the DAQ in writing within ten (10) days of encountering or discovering the delaying event, describing in detail the event or delay, the precise cause(s) of the event of delay, the measure(s) taken and to be taken by the COMPANY to prevent or minimize the event or delay, and the schedule by which those measures will be implemented. If the Director determines that noncompliance with this ORDER was caused by circumstances beyond the control of the COMPANY, the COMMISSION and the COMPANY jointly may stipulate and agree to a written modification of this ORDER. Any modifications of this ORDER must be agreed to in writing by both parties and are subject to the public notice requirements specified in 15A NCAC 2D .2203. Extension of any compliance date pursuant to 15A NCAC 2D .2203(e) shall not extend any subsequent deadlines established in the ORDER unless the subsequent deadline necessarily is dependent upon completion of the earlier deadline.
- VII. This ORDER shall pertain only to the equipment, sources, and operations described in Paragraph I of this ORDER. Any violation of Air Quality Standards resulting from these emission units or any other sources or equipment that are not resolved by this ORDER remains subject to appropriate enforcement action pursuant to N.C.G.S. §§ 143-215.114A, 143-215.114B and 215.114C.
- VIII. The COMPANY agrees to waive any rights it may have to seek judicial review to challenge this ORDER or to seek a stay of enforcement of this ORDER in connection with any judicial review of the State Implementation Plan. The COMMISSION acknowledges that this waiver does not prohibit the COMPANY from seeking modification of this ORDER if any regulatory standards upon which this ORDER is based are changed subsequent to its execution. In such cases, the COMPANY may petition that the ORDER be modified to reflect those regulatory changes.
- IX. In the event the COMMISSION or the DAQ finds that reports, plans, specifications, or permit applications required by Paragraphs II and III of this ORDER are in any respect deficient or if additional information is necessary to comply with the requirements of N.C.G.S. § 143-215.107 *et seq.*, any regulations promulgated thereunder, or any other

applicable laws or regulations, the COMPANY shall be notified by the DAQ as soon as possible. The COMPANY shall be afforded an opportunity to modify, amend, or supplement its submissions to make such submissions complete and appropriate.

- X. All notices and reports required by this ORDER shall be delivered to:

Heather S. Carter, Regional Air Quality Supervisor
NCDEQ, Division of Air Quality
Fayetteville Regional Office
225 Green Street, Suite 714
Fayetteville, North Carolina 28301

All payments required from the COMPANY by this ORDER shall be delivered to:

Enforcement Group – Payments
NCDEQ – DAQ
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

- XI. This ORDER constitutes full and final settlement and satisfaction of all matters addressed herein and any and all claims or prospective claims that the COMMISSION has or may have for violations of regulations described in Paragraph I hereof, as of the date this ORDER is approved by the COMMISSION and continuing until this ORDER expires as provided in Paragraph XVI. This ORDER shall not affect the COMPANY's obligation to comply with any Federal, State, or local laws or regulations.
- XII. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed consent decrees to the public, and that the public have at least thirty (30) days within which to comment on the ORDER.
- XIII. Should any provision of this ORDER be declared by a court of competent jurisdiction to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.
- XIV. Except as otherwise set forth herein, this ORDER is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.
- XV. In the event of termination of operations and closure of the Facility, the COMPANY shall notify the Director in writing, within five (5) business days of the earlier of (i) the date of any Workers Adjustment and Retraining Notification Act (WARN) notification, or (ii) Facility closure. Receipt of said notification from the COMPANY by the Director shall

terminate any obligations of the COMPANY pursuant to this ORDER, including those pertaining to stipulated penalties, and this ORDER shall become null and void in its applicability to the COMPANY. The COMPANY acknowledges its responsibilities pursuant to this ORDER from the date of final approval and entry of this ORDER, through the date of receipt by the Director of notification of closure required by this Paragraph.

XVI. This ORDER is effective on execution by the Division of Air Quality and shall expire upon issuance of the PSD permit or on December 31, 2019, whichever is sooner.

This the 15TH day of AUGUST, 2018.

ATTESTED:

ENVIVA PELLETS SAMPSON LLC

BY: 
Enviva Pellets LLC Responsible Official

APPROVED AND ACCEPTED:

By: _____
Environmental Management Commission

Date: _____